Supreme Court, U.S.
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OFFICE OF THE CLERK

NO._____

In The

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM,1995

STEVEN M. BONO, AND CYNTHIA L. BONO
PETITIONERS,

VS.

JOE HAMILTON,LOUISE HAMILTON,LIOYD GENTRY,
ALBERTA GENTRY,DAVID NORRIS, AND JOAN NORRIS
RESPONDENTS,

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

STEVEN M. BONO, AND
CYNTHIA L. BONO
308 SOUTHGATE DR.
RICHLAND, MISSISSIPPI
POSTAL ZONE, 39218
(601) 932-4489
BELLIGERENT CLAIMANTS IN PERSON
PROCEEDING, SUI JURIS

QUESTION PRESENTED

The Alabama court of last resort has departed from the normal, accepted, and usual judicial proceedings, and thereby upheld such departures in the lower courts concerning your petitioners case.

Comes now your petitioners and asks;

Does the U.S. Constitutional provisions at; Art. 3 Sec. 2, Art. 4 Sec. 2, Art. 6 Cl.2, the first,seventh,and fourteenth amendments,have the force of law, under Title 42 USC section 1985 to secure your petitioners a jury trial, in the state of Alabama, which was timely demanded, not waived, and not afforded to your petitioners?

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PETITION FOR WRIT OF CERTIORARI

Petitioners Steven M. Bono and Cynthia L. Bono, respectfully prays that a Writ Of Certiorari issue, to review the decision of the Supreme Court of Alabama to deny your petitioners' right to a jury trial on December 20, 1995.

OPINIONS BELOW

No opinions were issued by either the Alabama Court of Civil Appeals , or the Alabama Supreme Court.

No assertions have been made by either of the above courts, or the respondents, that your petitioners have waived any such right.

STATEMENT OF JURISDICTION

This honorable court has jurisdiction to review this case and grant the petition for writ of certiorari prayed for herein. The state court of last resort, the Alabama supreme court, entered its decision to deny review of this matter on December 20, 1995. This court has jurisdiction to review the petioners case pursuant to 28 U.S.C. 1257(A) and Title 42 Section1985. Your petitioners, having asserted below, and is asserting herein the deprivation of rights secured by the United States Constitution and the Alabama State Constitution, and the deprivation of civil rights enumerated in the statutes of Alabama, and also those of the United States

The requirements of this court's rule 13 and this court's rule 10 A and B are met as the denial below was issued by the Alabama court of last resort, and this petition is timely filed. Additionally, the issue presented herein was raised before the Alabama court of civil appeals on extraordinary motion and the the Supreme Court of Alabama on review. This having been done pursuant to and in accordance with the rules of the Alabama Supreme Court and the Alabama statutes.

CONSTITUTIONAL PROVISIONS, STATUTES AND THE RULES OF ALABAMA SUPREME COURT INVOLVED IN THE CASE.

UNITED STATES CONSTITUTION AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

UNITED STATES CONSTITUTION AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

UNITED STATES CONSTITUTION AMENDMENT XIV

Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.

UNITED STATES CONSTITUTION
ARTICLE III.

Section 2: The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be part, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

UNITED STATES CONSTITUTION
ARTICLE IV.

Section 2: The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.

UNITED STATES CONSTITUTION
ARTICLE VI.

Paragraph 2: This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary not withstanding.

CONSTITUTION OF ALABAMA
ARTICLE I.

SECTION 13: Courts to be open; remedies for all injuries; impartiality of justice.

SECTION 11: That the right of trial by jury shall remain inviolate.

SECTION 25: That the citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the power of government for redress of grievances or other purposes, by petition, address, or remonstrance.

SECTION 35: That the sole and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property, and when the government assumes other functions it is usurpation and oppression.

ARTICLE VI

SECTION 2: Except in cases otherwise directed in the constitution, the Supreme Court shall have appellate jurisdiction only, which shall be coextensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law; provided, that said court shall have power to issue writs of injunction, habeas corpus, quo warranto, and such other remedial and original writs as may be necessary to give it a superintendence and control of inferior jurisdictions.

STATUTES

Section 18-1A-150(b) ALABAMA STATUTES (1975)

(b) The circuit court may require any severable non jury issue to be tried separately in advance of the trial on the issue of the amount of compensation.

Section 18-1A-151(a) ALABAMA STATUTES (1975)

(a) In the circuit court the amount of compensation and any additional issue for which the right to trial by jury is secured by the constitution shall be determined by a jury only, if a party entitled to participate in the trial of the issue expressly demands trial by jury. The circuit court shall determine all other issues without a jury.

Section 18-1A-174. ALABAMA STATUTES (1975)

Anything in this article to the contrary notwithstanding, the highest and best use of the property sought to be acquired shall be determined by a jury, if a trial by jury has been demanded.

Section 18-1A-283. ALABAMA STATUTES (1975)

Any of the parties may appeal from the order of condemnation to the circuit court of the county within 30 days from the making of the order of condemnation by filing in the probate court rendering that judgment a written notice of appeal, a copy of which shall be served on the opposite party or his attorney, and on such appeal, the trial shall be de novo, and it shall be necessary to send up the proceedings only as to the parties appearing or against whom an appeal is taken.

Section 18-2-19. ALABAMA STATUTES (1975)

From any assessment of damages made or had under this chapter, the landowner, if dissatisfied, is entitled to an appeal, as matter of right, to the circuit court of the county, and on such an appeal to a trial de novo by jury, such appeal to be taken within 20 days after the application is granted, on giving security for costs of appeal, to be approved by the judge of probate. Upon the giving of such security, the judge of probate must file in the office of the clerk of the circuit court a full and complete transcript of all the proceedings , including the inquest of the jury, within 10 days after such appeal is taken.

STATEMENT OF THE CASE

References to the pertinent parts of the record contained in the appendix to this petition shall be made as (App._____) including the appropriate page number.

References to the Alabama Supreme Court rules of civil procedure will be referred to as (ARCP).

References to the Alabama Supreme Court rules of appellate procedure will be referred to as (ARAP).

References to the Court Record will be referred to as (CR_____) including the appropriate page number.

For nine years, your petitioners have been denied any practicial, suitable, or realistic use of their property.

In 1987, the owner of the mobile home park from which we rented a lot, announced that he had sold the land and we would have to vacate. This forced us to purchase " the American dream" prematurely. We sought and located a suitable piece of property only to find that it was landlocked. Before ruling out the purchase of this property, we decided to talk to the surrounding land owners to see if a right of way was obtainable.

When queried by the petitioners, defendant Mr. Norris told the petitioners that he would not be opposed to granting a right-of-way if Mr. Hamilton would allow it. Defendant Mr. Hamilton said that he would like to help us, however, there was a water spring nearby in which his cattle obtained water and he was afraid that a driveway would damage the spring. Your petitioners then asked Mr. Hamilton if he would be opposed to the driveway, if the petitioners agreed to hire the best environmental engineer in Alabama to state how a driveway could be built without endangering the spring. Mr. Hamilton then stated that he would not be opposed to the access road on those conditions.

Your petitioners then called Law Engineering, a local engineering firm, and requested that they call Mr. Hamilton and set up an appointment to go to the property and perform the service. Also, petitioners requested of Law Engineering that someone from their office call the petitioners and verify that the appointment had indeed been set. Based on Mr. Hamilton's affirmation and setting the appointment, your petitioners then purchased the property as having had an agreement and meeting of the minds with reasonable people.

When the engineer met with Mr. Hamilton and Mr. Bono, the dream soon turned into a nightmare. At this meeting, defendant Mr. Hamilton stated that he wanted to build a pond and that the driveway would interfere. Your petitioners then asked the engineer if a pond could be built utilizing a dam as a driveway thereby benefiting both parties. Before the engineer could answer, Mr. Hamilton told us that he would not allow a right of way under any circumstances.

Upon Mr. Hamilton's remark that he was not going allow a right of way under any circumstances, your petitioners then stated that they had spent their entire life savings on this tract of land which now would have no practical, suitable, or realistic use, and had incurred the expense of hiring the engineer based upon his promise to allow the driveway and that he could have prevented everyone involved a great deal of trouble and money had he made this clear from the beginning. Mr. Hamilton then offered to purchase the property for half the price paid by your petitioners only days prior to this.

At this point, we had to move our mobile home to another lot where monthly rent was due. This greatly inhibited the ability of your petitioners to begin to rebuild their savings in order to build a home. The land lord of this new lot would not allow many of our belongings. After obtaining permission to use a mountainous logging road on a one-time basis in order to put some of their personal belongings on this land-locked tract of land, those belongings were left unprotected and consequently, were destroyed at a later date. Jefferson County deputies described the scene in the police report as follows:

> " three vehicles had been heavily damaged,and one utility building that had been destroyed. All vehicles had the appearance of being beaten with hammers, iron bars ect.."(App.1)

Your petitioners then spent months exploring every other possible access at which time they presented the scenario to the county planning commission which looked over the situation and advised that a condemnation under eminent domain was the only avenue by which to gain access to their own property.

This case originated in the probate court in and for the Bessemer division of Jefferson County, Alabama.

On 5-13-88, the petitioners filed a petition for order of condemnation, under eminent domain to provide ingress and egress to a tract of land, which they own.

On 6-27-88, the Probate Judge O.H. Florence held a hearing in probate court. The defendants, opposing the condemnation, asserted that the petitioners' land was not land locked and was adjacent to a public road.

On 07-08-88, the petitioners filed an amended petition, asking the court to declare such road as may be described and presented by the defendants as a public road to and from plaintiffs' property.

On 07-25-88, the Probate Judge O.H. Florence held a hearing in which the defendants no longer asserted that the plaintiffs had other access to a public road, but instead, now claimed that there would be a drainage problem if the condemnation was so ordered. The plaintiffs asserted that they had previously hired an environmental engineer, at the request of defendant, Joe Hamilton and that an on-site inspection had been made by Tony Cooley, geological engineer of Law Engineering on 5-12-87, in the presence of both plaintiff Steven Bono and defendant Joe Hamilton. The plaintiffs then entered into evidence a letter from Law Engineering dated 7-22-88 stating that;

> "Based on the on-site observations, we see no engineering reason that such a roadway could not be constructed at this location. We consider construction of such a roadway in the location discussed above unlikely to cause harm to the flow of the spring."

The Probate Judge O.H. Florence ordered a continuance with an on-site hearing set for 8-3-88 with benefit of testimony of Mr. Cooley the geological engineer.

On 10-07-88, The Probate Judge O.H. Florence issued the opinion that;"the condemners are entitled to the relief prayed for in said petition" and so ordered it. The court further appointed commissioners to assess damages and compensation to which the condemners are entitled.(CR.22)

On 10-25-88, the Probate Judge O.H. Florence issued an order filing reports of commissioners.

On 11-12-88, the Probate Judge O.H. Florence issued an order confirming the reports of commissioners, and condemning the land upon payment of awards.

After vehement opposition and delay, the probate court did order the condemnation. However, for the one quarter acre which your petitioners requested in the taking, the defendants asked to be paid an amount exceeding three times the amount paid by your petitioners for the 20 acre tract, to which the one quarter acre is contiguous.

> Section 18-2-19. Alabama statutes (1975)
> From any assessment of damages made or had under this chapter, the landowner, if dissatisfied, is entitled to an appeal, as matter of right, to the circuit court of the county, and on such an appeal to a trial de novo by jury, such appeal to be taken within 20 days after the application is granted, on giving security for costs of appeal, to be approved by the judge of probate. Upon the giving of such security, the judge of probate must file in the office of the clerk of the circuit court a full and complete transcript of all the proceedings , including the inquest of the jury, within 10 days after such appeal is taken.

Your petitioners sought to avail themselves of their right to appeal as well as their right to a de novo jury trial. Petitioners made a timely demand for the appeal and the de novo jury trial and both were granted and so ordered by the probate court.

Pursuant to section 18-2-19 Ala. Stat. (1975), pg. 7, the probate court sent the entire proceedings forward to the circuit court, which is proper and correct in order for a case to be tried de novo by a jury as was ordered by the probate judge (CR-46).(App.2)

However, the circuit clerk, upon receiving the order and proceedings, at best was negligent and derelict in duty and thus set the case for a bench trial, thereby substantially injuring your petitioners' cause and denying their right to a de novo jury trial. (App.3)

Rule 39(a) (ARCP) states; By jury. When a trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action.

According to section 18-2-19 Ala. Stat. (1975), pg. 7, the the entire proceedings are sent up whenever a jury trial is requested on the basis that the jury would not be privy to the information contained therein. Your petitioners requested and were granted a de novo jury trial and the probate court correctly sent the entire proceedings to the circuit court. However, the Circuit Court ignored Alabama Statute 18-2-19 (1975) by setting the cause for a bench trial as provided by Alabama Statute 18-1A-283 (1975), pg. 7.(App.3)

> In a case to be tried by a bench, the proceedings only as to the parties appearing or against whom an appeal is taken. 18-1A-283 Ala. Stat.(1975) pg. 7.

The Circuit Court granted repeated delays despite a noted objection and other objections not noted, made by your petitioners to Judge Cook. The case was "continued" seven times. Five out the seven continuances, required that your petitioners drive 250 miles to court on the morning of the hearing. The Judge would then grant a continuance which necessitated a 250 mile trip back to their residence without any resolution. It also necessitated lost wages from time taken off from work as well as 10 hours of driving time and the normal travel expenses such as gasoline and wear and tear on the automobile which would normally accompany a 500 mile trip.

After nearly five years on 3-14-94 the case finally came before Judge Verin, there was no jury because the case had not been docketed for a jury.

Rule 39(a)1 (ARCP) states; By jury. When a trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered into the record, consent to trial by the court. (Emphasis added)

Your petitioners thought nothing of this because 18-1A-150(B) Ala. Stat.(1975) pg. 6 states; "The circuit court may require any severable nonjury issue to be tried separately in advance of the trial on the issue of the amount of compensation. (Emphasis added)
Section 18-1A-151(a) pg.6 Alabama Statutes (1975) states;

> (a) In the circuit court the amount of compensation and any additional issue for which the right to trial by jury is secured by the constitution shall be determined by a jury only, if a party entitled to participate in the trial of the issue expressly demands trial by jury. The circuit court shall determine all other issues without a jury. (Emphasis added)

Even if the case had been set properly and a jury trial had been waived, judicial ethics dictates that the trial judge be ever mindful of cases taken under submission or advisement, but in this case, the following illustrates that the trial judge had forgotten all about the case of your petitioners, and that the case was indeed decided by the trial judge utilizing records that would not have been sent up in this contingency.

A. Nine months later on 12-15-94 the case was set for another hearing on 1-31-95.(App.4)

B. On 1-1-95 the trial judge was mandated to submit a report pursuant to Ala. Canons of Judicial Ethics Canon 3(A)5 which states ;

> a judge should dispose promptly of the business of the court, being ever mindful of matters taken under submission. On the first day of January and the first day of July of each year, each judge shall file a report which shall show the cases and/or matters which have been under submission or advisement for a period of six months or

longer, and if there has been no case or matter under submission or advisement for a period of six months or longer shall so state. Where a matter or case has been under submission or advisement for six months or longer, the report shall give the date or matter or case was taken under submission or advisement and the reasons for the failure of the judge to decide such matters or cases. Trial judges shall file their lists with the administrative office of courts, and appellate judges shall file their lists with the clerk of their appellate court. No such report was ever filed by the trial judge.(App.5)

C. On 1-14-95 the record shows a judgment entered.

D. On 1-15-95 the trial judge vacated office, having been defeated in elections.

E. On 2-9-95 petitioners attorney of record received the judgment by facimilie at 14:52 hours.(App. 6) Which shows the judgment only and no subsequent action, however (CR.72) shows that on 1-31-95 letters were sent, concerning this judgment.(App.7)

Chief Justice Cooley, said of the right to jury trial;

"The constitutional principle which underlies the right is one to which people governed by the common law have clung to with perhaps more tenacity than any other ; and they have justly regarded it not preserving simply one form of investigating the facts in preference to another where both would have attained the same result, but as securing the mode of trial which was best calculated to insure a just result, and to secure the citizen against the usurpation of authority, and against arbitrary or prejudiced action on the part of single individuals who chanced to be possessed of judicial power." *Chief Justice Cooley, in Van Sickle v. Kellogg 19MICH. 49*

This honorable court has said of USC. Title 42,Sec.1985; This section was passed to enforce U.S.C.A. Amendment 14 and to protect from interfereance the rights secured thereby, as well as other constitutional rights; it is directed against conspiracies of private persons; and there is no requirement that conspiracy be under the color of law.
Mullarky v. Borglum,DC NY, 1970, 323 F Supp. 1218, quoted from U.S.C.A. 1972 Pocket P. 1675, Title 42, Sec.1985, note 2.

The Alabama Supreme Court has said of this right; The land owner in this state is protected in his possession so long as he has not had or waived the right to have compensation assessed by a jury of 12 men.
Southern Ry. v. Birmingham,S.& N.O. Ry. 130 Ala.660, 31 So. 509

The Alabama Constitution ARTICLE 1 SECTION 11: That the right of trial by jury shall remain inviolate.

The United States Constitutional Amendment VII. states;

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Prior to our attorney of record forwarding us a copy of the judgment , your petitioners were unaware that the issue of damages had been adjudicated. When asked how this trial came to be judged without benefit of a jury, our attorney of record stated that he had waived a jury trial. He was asked to forward your petitioners a copy of the court record repeatedly. We finally received this copy on 10-19-95. After looking over the court record your petitioners went to the office of Earl N. Carter Jr. Circuit Clerk to ascertain how it came to be that a jury trial had never been set in this matter, and also to insure that the court record in his file was the same as the one which was forwarded to us, as Rules 39(a) (ARCP) deals with how a waiver of a jury trial can be made.

Rule 39(a)1(ARCP) states;

"By jury. When a trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered into the record, consent to trial by the court.

Rule 44(b) (ARCP) Provides; Lack of record.

A written statement that after a diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule in the case of a foreign record, is admissible as evidence that the records contain no such entry.

Your petitioners submitted such a statement in the form of an affidavit, with their extraordinary motion to demand jury trial de novo in the Alabama court of civil appeals.

This Honorable Court has also said," The courts indulge every presumption against the waiver of such right."
U.S.--Athena Insurance Co. v. Kennedy, To use of Bogash PA. 57S.CT.809,301 U.S.389, L.E.D.1177

On 10-30-95 your petitioners filed an extraordinary motion to demand jury trial de novo in the court with which this matter was under appeal, pursuant to rule 27(ARAP). Acting as" Sui Juris, belligerent claimants in person."

This court has said of rights ;

"That they are neither accorded to the passive resistant, nor the person who is ignorant his rights, not to one indifferent thereto. It is a fighting clause. A rights benefit can be retained only by sustained combat. They cannot be claimed by an attorney or solicitor. It is valid only when insisted upon by a belligerent claimant in person". *United States V. Johnson,76 F Supp 538.*

This court has also said;

" A stipulation in writing was essential to secure a trial by the court sitting without a jury, and where the record failed to disclose any waiver of a jury by stipulation in writing, the case was required to be considered as so tried independently of the statute."

U.S.- Ford v. Grimmet C.C.A.La.278F. 140

The Alabama court of civil appeals dismissed your petitioners extraordinary motion to demand jury trial de novo on 11-8-95 (App.8)

On 11-22-95 your petitioners filed a writ of review de novo as provided for in rule 39(l) (ARAP).

Rule 39(l) (ARAP) states;

Review in supreme court of decisions of courts of appeals for extraordinary writs. A party aggrieved by a decision of a court of appeals on a petition for writ of mandamus or other extraordinary writ is entitled to review in the supreme court as provided in Rule 21(e).(Emphasis added.)

On 12-20-95 the Alabama court of last resort, (who wrote the rules, denied the reveiw even though the rules stated we were entitled to said reveiw, issued the following order;

ORDER

The petition seeking "Review Denovo Pursuant to Rules 21(e) and 39(1) of Extraordinary Motion to Demand Jury Trial, Denovo Which Was Dismissed by the Alabama Court of Civil Appeals," having been duly filed and submitted to the Court,(sic)

" IT IS CONSIDERED AND ORDERED (sic) that the petition for de novo review is denied.(Emphasis added)

Hooper, C.J., and Maddox,Alman, Houston, Ingram, and Butts, JJ., concur. (App. 9)

Article 1 Section 13 of the Alabama Constitution states;

" Courts to be open; remedies for all injuries; impartiality of justice."

Article VI. Section 2 of the Alabama Constitution states;

"Except in cases otherwise directed in the Constitution, the supreme court shall have appellate jurisdiction only, which shall be coextensive with the state, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time be prescribed by law; provided, that said court shall have power to issue writs of injunction, habeas corpus, quo warranto, and such other remedial and original writs as may be necessary to give it a superintendence and control of inferior jurisdictions." (Emphasis added)

The United States Constitution Article VI. Paragraph 2 states;

"This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.(Emphasis added)

Article 1 Section 25 of the Alabama Constitution states;

"That the citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the power of government for redress of grievances or other purposes, by petition, address, or remonstrance."

The United States Constitution Amendment I states;

" Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The United States Constitution Amendment XIV Section 1 States;

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws."

These sections would indicate the above court was mandated to look into this matter, and protect our rights.

Article 1 Section 35 of the Alabama Constitution states;

> "That the sole and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property, and when the government assumes other functions it is usurpation and oppression.

REASONS FOR GRANTING THE WRIT

The people in writing the constitutions of both the Alabama and the United States Constitutions, provided for a right to a jury trial on issues at the common law.

The Alabama legislature reconized this when they wrote statutes.

If the judiciary in Alabama is not to be bound to this right, which the people have clung to with perhaps more tenacity than any other, then your decision could be a pivotal point in American history.

The effect of the publics' perception of the judical system could have a paradoxical effect on this courts very existence.

The claiming of our rights is not merely incidential to this case, it is a part of our life to uphold and defend the constitution which empowers this court. This can be shown by the following example:

When the "Conferences Of The States" (ie.. Constitutional Convention) was before our legislature, we were personaly instrumental (according to several legislators, and the media) in getting it quashed. This was done by illustrating that our constitution had indeed already been rewritten. We provided a copy of the " New States Of America" constitution as re-written by the Ford Foundation, to each represenative. This killed an expected affirmative vote.

It is note worthy that the "New States Of America" constitution does not provide for a United States Supreme Court. This point was specificaly pointed out to our legislature.

What are the courts, if not to insure that the rights of individuals are upheld? The Alabama court of civil appeals and the Alabama supreme court are finding the rights secured by their constitution are not to be upheld.

The United States Constitution Article IV Section 2;

> The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.

IN CONCLUSION

We did not know that ours had been violated. Had we known, prior to recieving a copy of the record, and a subsequent visit to the circut clerk, we would have objected.

This court has said of rights,

> "That they are neither accorded to the passive resistant, nor the person who is ignorant of his rights, not to one indifferant thereto. It is a fighting clause. A rights benefit can be retained only by sustained combat. They cannot be claimed by an attorney or solicitor. It is valid only when insisted upon by a belligerent claimant in person."

United States V. Johnson, 76 F Supp 538

Your petitioners have demonstrated that we are not passively resistant, nor are we ignorant of our rights, and we are not indifferent to our rights, and we have fought a sustained combat for our rights, we are belligerant claimants in person. We are insisting that our right to a jury trial be accorded to us.

Your petitioners have also fought to protect the very document, contract if you will, that this very court dirives its power from. We are certain that this court will acknowledge the portion that empowers our rights, as well.

The courts in Alabama, in denying your petitioners fundemental right to a jury trial, did so without furnishing us with the conclusions of law or facts relied upon in sustaining this denial as per our request. It is our sincere belief that Alabama courts erred in denying our rights. If this court finds that our rights are not to be accorded, then we respectfully request that this court furnish us with the conclusions of law and facts relied upon so that we might have a better understandingof our judicial system.

With all due respect,

Steven M. Bono and Cynthia L. Bono
308 Southgate Drive
Richland, Mississippi
Postal Zone 39218
(601) 932-4489

APPENDIX

Alabama Uniform Incident/Offense Report

Case Number 8806-3595

Agency Name: Jefferson County Sheriff's Office

Victim Name: Steven M. Bono

Type of Offense: Criminal Mischief

Description of the Weapons/Tools used in Offense:

Hammers, Iron Bars, etc.

Date and Time of Report: June 25, 1988; 4:05 p.m.

Narrative:

When deputies arrived on scene, they observed three vehicles that had been heavyly [sic] damaged and one utility building that had been destroyed. The vehicles had severe body and interior damage, all windows had been broken out of all vehicles, two of the vehicles belonging to Mr. Bono, one of the vehicles a 1972 Plymouth Valiant, belonging to Mr. Walter F. Bannerman, of 320 Jefferson Avenue, Bessemer, Alabama 35020. His phone number is 425-1549. All vehicles had the appearance of being beaten with hammer, iron bars, etc. Mr. Bannerman was notified about the damage to his vehicle. He requested that the information on his vehicle be included on this report.

(All non-pertinent information or blanks in form are ommitted. A photocopy of this report will be provided upon request).

Jud. 165 Page 412 (Court Record Pg. 46)

In the Matter of:

Steven M. Bono and Cynthia Bono

vs.

Joe Hamilton, et al.

In the Probate Court of Jefferson County, Alabama

Bessemer Division

December term 1988

Case No. 26024

[January 11, 1989]

Order on Filing Notice of Appeal

This day came Steven M. Bono and Cynthia Bono and filed their notice of appeal from the Order Confirming Report of Commissioners and Condemning Land upon Payment of Award assesing damages and compensation to which said Condemnees are entitled in comndemnation [sic] proceedings to the Circuit Court of Jefferson County, Alabama, Bessemer Division, as is provided by the Statute in such cases made; demanding a trial by jury in the said Circuit Court of Jefferson County, Bessemer Division, in said appeal of said cause.

It is therefore ordered by the Court that said appeal be and the same is hereby granted.

It is therefore ordered by the Court that said appeal be and the same is hereby granted. It is further ordered that Joe Hamilton, Louise B. Hamilton, David C. Norris, Joan B. Norris, Malcolm H. Ensor, Jr., Connie J. Ensor, Lloyd E. Gentry,

Alberta R. Gentry and Jefferson Federal Savings and Loan Association of Birmingham have notice of the filing of said appeal in the manner and form as is by the Statute in such cases made and provided.

Done and Ordered this the 29th day of December, 1988.

/s/ O.H. Florence
O.H. Florence
Judge of Probate

Certificate of Appeal to Circuit Court

The State of Alabama, Bessemer Division, Jefferson County,

Probate Court Case No. 26024

To: The Hon. J.B. Vines, Clerk of the Circuit Court

In re: Condemnation Proceedings Steven M. Bono and Cynthia Bono vs, Joe Hamilton, et al.

The above styled cause having been appealed by Steven M. Bono and Cynthia Bono, condemnors, from this Court to the Circuit Court, I hereby certify to you the original file and all orders of the Courtin [sic] said cause, all of which I hereby certify respectfully to the Circuit Court, Tenth Judicial Circuit of Alabama, Jefferson County, Alabama:

1. Petition for order of condemnation
2. Security for costs
3. Waivers (2)
4. Citations (9)
5. Answer to defendant, Joe Hamilton, Louise B. Hamilton, David C. Norris, Joan B. Norris, Lloyd F. Gentry and Alberta R. Gentry
6. Amendment to petition for order of condemnation
7. Citations (3)
8. Exhibits of CondemnorNo. [sic] 1, 2, 3, 4, 5, 6, 7, and 8
9. Exhibits of Condemnees A, B, C, and D
10. Order appointing commissioners

11. Certificate of Commissioner
12. Commission to assess damages
13. Commissioners reports (4)
14. Order on filing reports of commissioners
15. Order on Commissioners fees
16. Notice of order on filing reports of commissioners (7)
17. Order confirming report of commissioners and condemning land on payment of award
18. Notices (7)
19. Notice of Appeal
20. Order on filing notice of appeal
21. Security for costs in Circuit Court
22. Citations (2)
23. Cost bill
24. Probate Judge's certificate

/s/ O.H. Florence
O.H. Florence, Judge of Probate

Activity Maintenance/Browse

Case No. CV 89 000033 00 Date: JID: RDH

Style/Name: Bono Steven M et al vs. Hamilton Joe et al

Date	Code	Comments
011189	01 ASSJ	Assigned to Judge Annetta H. Verin
011189	02 ASSJ	Assigned to Judge Roger D. Holcomb
011189	03 ASSJ	Assigned to Judge Theresa B. Petelos
011189	04 ASSJ	Assigned to Judge Roger D. Holcomb
110191	01 TEXT	Case passed as unreached
120192	01 TEXT	Case passed to 1/21/93
042793	01 TEXT	Case passed by consent
011494	01 DOCK	Set for Trial on 31494 at 0900A
011494	02 DOCK	Set for Pre Trial on 021194 at 0900A
011494	03 DOCK	Set for Hearing on 012193 at 0000
012094	01 DOCK	Docket Notice mailed on 01/20/94
012094	02 DOCK	Docket Notice mail on 01/20/94
121594	01 DOCK	Set for Trial on 013095 at 0900A
121994	01 DOCK	Docket Notice mail on 12/19/94

(The initials of the entry clerks have been ommitted).

Activity Maintenance/Browse

Case No: CV 89 000033 00 Date: JID: RDH

Style/Name: Bono Steven M et al vs Hamilton Joe et al

Date	Code	Comments
121994	02 DOCK	Docket notice mailed on 12/19/94
121994	03 DOCK	Docket notice mailed on 12/19/94
011495	01 TEXT	Order
013095	01 SUMM	Sheriff issued on 013095 to D
103095	02 PART	Hubbard R V Added as D010
022495	01 TEXT	Case Appealed to Supreme Court
050195	01 COST	Cost Bill Prepared or C001
051995	01 TEXT	Disposed on: 05/19/95 by Bench entry

10/26/95

102695	01 DISP	Disposed on: 05/19/95 by Bench Trial

(Entry Clerk's initials have been ommitted).

Administrative Office of the Courts
300 Dexter Avenue
Montgomery, Alabama 36104-3741
(334) 242-0300
January 5, 1996

Mr. Steven M. Bono
308 Southgate Drive
Richland, MS 39218

Dear Mr. Bono:

I have received your facsimile copy of the Application and Request for Computer-Based Data and your letter dated December 29, 1995, to Mr. Frank Gregory, requesting and affidavit concerning the location of a semiannual report filed by Judge Annetta H. Verin, former Circuit Judge of Jefferson County, Bessemer Division, who served from November 1, 1993 to January 16, 1995.

Canon 3A. (5), Canons of Judicial Ethics, a copy of which is attached, provides for submission of these semiannual reports by all judges. Although I could not locate a report submitted by Judge Verin, it appears from the Case Action Summary in your case, CV-89-33, that the case was not one that should have been placed on a list for cases under advisement more than six months. The trial date and the issuance of the order by Judge

Verin appear to be less than six months apart.

Because I am enclosing copies of this additional information, an affidavit from Ms. McNees may be unnecessary at this time. However, if you still need an affidavit, please do not hesitate to call. Also, if you wish for our office to proceed with your application for computer information pursuant to Rule 33, Alabama Rules of Judicial Administration, please inform me.

Sincerely yours,

/s/ Robert H. Maddox

RHM/bm
enclosures

Corretti & Newsom
Attorneys at Law
1804 7th Avenue North
Birmingham, Alabama 35203-2280
February 9, 1995

Mr. and Mrs. Steve Bono
308 Southgate Drive
Richland, Mississippi 39218

RE: Steven M. Bono, et al v. Joe Hamilton, et al
In the Circuit Court of Jefferson County, Alabama
Bessemer Division - Case No. CV-89-33

Dear Mr. and Mrs. Bono:

We are enclosing copy of judgment which we received by fax today. Needless to say, I deeply regret that it took the judge such a long time to enter the order. The order was entered on January 14, 1995, however, we did not receive it until approximately 3:00 p.m. on February 9.

Please advise me if you are interested in receiving the right-of-way based on amounts which the court has determined to be the fair market value of the property condemned for said right-of-way.

If you should have any questions in connection with this

matter, please feel free to write or call us.

With kind regards,

Very truly yours,

Corretti & Newsom

/s/ Douglas Corretti

Douglas Corretti

DC/rtn

Enclosure

FEB-09-1995 14:52 P.02

(date and time of facsimile transmittal from Alabama Circuit to Douglas Corretti, Esquire)

Alabama Judicial Data Center

Case Action Summary

Circuit Civil Case: CV-89 000033

In the Circuit Court of Jeff-Desm County Judge: RDH

Bono Steven M. et al vs. Hamilton Joe et al

Filing Date: 1/11/89 Amount: $.00 Type: Condemnation

Trial: Misc: Court Act. Code: Type Trl: B

****

****

12/1/92: Case Passed to January 21, 1993 at 9:00 a.m.

/s/illegible

4/16/93: Case passed by consent to be reset. /s/ illegible

4/27/93: Case passed by consent to be reset. /s/ illegible

1/14/95: This cause came to be heard on the appeal of Plaintiffs. demanding a trial de novo as to questions of damages. In consideration of the evidence presented, this Court thereby finds in favor of the defendants, Joe and Louise Hamilton, Lloyd and Alberta Gentry and David and Joan Norris. Damages are assessed as follows: Joe and Louise Hamilton $6,000, Lloyd and Alberta Gentry $6,000 and David and Joan Norris $2500.

/s/ Annetta H. Verin, Judge

FEB-09-1995 14:52 P.02

(date and time of facsimile transmittal from Alabama Circuit to Douglas Corretti, Esquire)

Alabama Judicial Data Center

Case Action Summary

Circuit Civil Case: CV-89 000033

In the Circuit Court of Jeff-Desm County Judge: RDH

Bono Steven M. et al vs. Hamilton Joe et al

Filing Date: 1/11/89 Amount: $.00 Type: Condemnation

Trial: Misc: Court Act. Code: Type Trl: B

****

****

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1/14/95: This cause came to be heard on the appeal of Plaintiffs, demanding a trial de novo as to questions of damages. In consideration of the evidence presented, this Court thereby finds in favor of the defendants, Joe and Louise Hamilton, Lloyd and Alberta Gentry and David and Joan Norris. Damages are assessed as follows: Joe and Louise Hamilton $6,000, Lloyd and Alberta Gentry $6,000 and David and Joan Norris $2500.

/s/ Annetta H. Verin, Judge

1/31/95: Letters (cla)

2/24/95: Notice of Appeal to the Supreme Court of Alabama

2/24/95: Docketing Statement

2/24/95: Notice of Appeal with Docketing Statement and $100.00 filing fee to the Supreme Court of Alabama.

2/27/95: Copy of Notice of Appeal and Docketing Statement to Arthur Green, Douglas Corretti and Clara Laird.

3/3/95: Transcript Purchase order of Appellant (Copy to Supreme Court)

3/13/95: Letter from Supreme Court with their case number - 1940757

3/13/95: Order from the Supreme Court - Case is Transferred to the Court of Civil Appeals. All further proceedings in this cause shall be filed with the Court of Civil Appeals.

Office of the Clerk of the Court of Civil Appeals

State of Alabama, Montgomery

RE: 2940472 November 8, 1995

Steven M. Bono and Cynthia Bono vs. Joe Hamilton, et al.

Appellants Appellees

You are hereby notified that the following indicated action was taken in the above cause by the Court of Civil Appeals:

_____ Court Reporter granted additional time to file reporter's transcript to and including

_____ Clerk/Register granted additional time to file clerk's record/record on appeal to and including

_____ Appell___ granted 7 additional days to file reply brief(s) to and including

_____ Record on Appeal filed on this date.

_____ Submitted on Briefs

_____ Application for rehearing overruled. No opinion written on rehearing.

_____ Permission to file amicus curiae briefs granted

_____ Rules suspended

_____ Transferred to the Supreme Court for lack of jurisdiction. A/N

_XX_ Appellants' Extraordinary Motion to Demand Jury Trial Denovo DISMISSED [sic].

/s/ John H. Wilkerson, Jr.
Clerk, Court of Civil Appeals of Alabama

Mailing Address:

300 Dexter Avenue

Montgomery, Alabama 36104-3741

In the Supreme Court of Alabama.
December 20, 1995
1950336
Ex parte Steven M. Bono and Cynthia Bono
Review Denovo pursuant to Rule 21(e)(1) and 39(1) of our extraordinary Motion to Demand Jury Trial, Denovo which was dismissed by the Alabama Court of Civil Appeals
(Re: Steven M. Bono and Cynthia Bono v. Joe Hamilton, et al, (CV-89-33))

ORDER

The Petition seeking "Review Denovo Pursuant to Rules 21(e) and 39(1) of the Extraordinary Motion to Demand Jury Trial, Denovo which was dismissed by the Alabama Court of Appeals, "having been duly filed and submitted to the Court,

IT IS CONSIDERED AND ORDERED that the Petition for denovo review is denied.

Hooper, C.J., and Maddox, Almon, Houston, Ingram, and Butts, JJ., concur.

I Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court. Witness my hand this 20th day of Dec. 1995.

/s/ Robert G. Esdale
Clerk, Supreme Court of Alabama